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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/686,250	10/15/2003	Robert A. Pangrcic	4640.78701	7623

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GREER, BURNS & CRAIN
300 S WACKER DR
25TH FLOOR
CHICAGO, IL 60606

EXAMINER	
SANDERSON, JOSEPH W	
ART UNIT	PAPER NUMBER
3644	

MAIL DATE	DELIVERY MODE
11/09/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/686,250	PANGRCIC, ROBERT A.	
	Examiner	Art Unit	
	Joseph W. Sanderson	3644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *02 July 2009*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,3,4,7,9,10,13-17 and 20-22* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,3,4,7,9,10,13-17 and 20-22* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 21 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 21 cites the body as defining at least one additional opening; however, it is unclear how there may be an additional opening in the body when claim 20 requires an aperture-free sidewall.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 1, 3, 4, 7 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson (US 3 949 510) in view of DePoe (US 6 032 399).

Regarding independent claim 1:

Johnson discloses a collapsible fish catcher comprising:

a handle (2) extending from a tubular body (4), the body having a solid, unitary side wall of uniform thickness (as seen in Figs 2 and 3; "unitary" as it is one piece, and "solid" as it is rigid), a first hole at one end (the opening as seen in Fig 2) and an end wall (16) defining a single, smaller second opening (Fig 6, any one of the holes 18 depicted; the "comprising" language of the claim allows for multiple holes), wherein fish are prevented from entering the handle (the handle is not hollow).

Johnson does not disclose the handle as non-rotatably connected to the body.

DePoe teaches a collapsible fish catcher using a non-rotatable handle (12) to collapse the device into a smaller form for storage (implicit in col 1, lines 11-16).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to have modified Johnson to use a non-rotatable handle as taught by DePoe as this is a well-known alternative means for predictably collapsing fish catcher handles into a smaller form for storage.

Regarding claims 3 and 7:

The discussion above regarding claim 1 is relied upon.

Johnson as modified renders the handle and body made of plastic (col 2, lines 16-17; col 2, lines 45-46).

Regarding claim 4:

The discussion above regarding claim 3 is relied upon.

Johnson as modified renders a plastic device, but does not specifically disclose the plastic as opaque.

In the absence of any stated problems solved by or any stated advantage obtained by having a certain feature as claimed in the instant invention, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have used opaque plastic for aesthetic purposes, and since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. See also *Ballas Liquidating Co. v. Allied industries of Kansas, Inc.* (DC Kans) 205 USPQ 331.

Regarding claim 9:

The discussion above regarding claim 1 is relied upon.

Johnson as modified renders non-slip features (the widening of the handle end, i.e., the gripping portion 6, in Johnson helps to prevent slip).

5. Claims 10, 13-17 and 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson (US 3 949 510) in view of DePoe (US 6 032 399) and Garrison (US 3 541 722).

Regarding claims 10, 13, 17, 20 and 22:

The discussion above regarding claim 1 is relied upon for the structure common to the claims.

Johnson as modified renders a fish catcher as described above, but does not disclose an aperture-free sidewall.

Garrison teaches a fish catcher having an aperture-free sidewall (as seen in Fig 1).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to have further modified Johnson to use an aperture-free sidewall as taught by Garrison to provide a darker, "safer" place for the fish to group, and since this is a predictable alternative means for designing such a device.

Regarding claims 14-16:

The discussion above regarding claim 13 is relied upon.

Johnson as modified renders a plastic device, but does not specifically disclose the plastic as opaque or semi-rigid.

In the absence of any stated problems solved by or any stated advantage obtained by having a certain feature as claimed in the instant invention, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have used opaque plastic for aesthetic purposes, and since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. See also *Ballas Liquidating Co. v. Allied industries of Kansas, Inc.* (DC Kans) 205 USPQ 331.

Regarding claim 21:

The discussion above regarding claim 20 is relied upon.

As best understood, Johnson as modified renders an additional hole in the body (any of the other holes 18 in the end wall).

Response to Arguments

6. Applicant's arguments with respect to claims 1, 10, 13, 20 and dependencies have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph W. Sanderson whose telephone number is 571-272-0474. The examiner can normally be reached on M 6:30 am - 11:30 am, T-F 6:30 am - 3:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael R. Mansen can be reached on 571-272-6608. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Rob Swiatek/
Primary Examiner, Art Unit 3643
5 November 2009

/J. W. S./
Examiner, Art Unit 3644